ATTORNEYS AT LAW—LIABILITY FOR IGNORANCE OF STATUTE OR FAILING TO LEARN FACTS.—In the case of *Humboldt Building Ass'n* v. *Ducker* (Ky.), 64 S. W. 671, the law concerning the liability of an attorney for errors in the examination of the title to real estate is again laid down. The association made a loan on certain lots and submitted the title to Ducker, its attorney, for approval. He approved it in substance, and the loan was made. At that time there was a local statute in force, applicable to only two counties in Kentucky, providing for liens on behalf of material men and sub-contractors. Without requiring the sub-contractors to waive their liens, the attorney paid the money to the principal contractor, whereupon the sub-contractors filed liens and suits to enforce them, resulting in a loss to the association of some $2,800. It thereupon brought suit against Ducker's executrix to recover such loss, alleging a lack of care and skill on Ducker's part. The lower court sustained a demurrer to the petition.

The Court of Appeals of Kentucky reverses this action on the authority of *Bank* v. *Ward*, 100 U. S. 195, and *O'Barr* v. *Alexander*, 37 Ga. 201. It rules that a bond which the attorney had given to the association for the faithful performance of his duties added nothing to the liability imposed upon him by law—that the action could have been maintained just as effectually if no bond had been given. Upon the point as to the local statute, the court says:

"It is stated in argument that the local act in this case was invoked at a time when the bar of Kenton and Campbell counties were in great doubt whether it had been repealed by the new constitution, which had but lately been adopted in this State; and that the attorney exercised his judgment, now seen to have been erroneously but honestly. That, however, is a matter of defense. Whether this question raised actually existed in the minds of the profession then is one of fact. If it did, and the attorney honestly believed that the sub-contractors had no lien because of that fact, then the jury may be warranted in finding for the defendants. But if the attorney was ignorant of the existence of the statute, or had forgotten it at the time of this transaction, or if, knowing of it, he carelessly failed to acquaint himself with the facts as to the sub-contractors' claim for liens till after he had paid out appellant's money, we are of opinion that he would be liable. However, the existence or non-existence of these actionable facts, as well as of those constituting the defense, is such as properly should be found by a jury under appropriate instructions, or by the trial court if a jury is not demanded."

MONOPOLIES—CONSPIRACY.—One of the most distinct deliverances of our American courts upon the subject of monopolies and how far they are within the scope of legal remedies, is the decision of the Supreme Court of Wisconsin in *Hawarden* v. *Youghiogheny and Lehigh Coal Co.*, 87 N. W. 472. The complaint charged that plaintiff was a retail coal dealer in the city of Superior; that the defendants, "the wholesalers," owned practically all the coal docks at Superior and Duluth; that a retailer could not carry on his business unless he could buy of the wholesalers freely and without discrimination; that the wholesalers entered into a conspiracy with the defendant retailers by which it was agreed that the wholesalers should sell to the defendant retailers and to none others, for the purpose of forcing out of the retail trade all retailers not in the combination, and among others, the plaintiff; that such conspiracy had been successful, and as a result thereof the plaintiff's business had been destroyed. It was *Held*, that these facts constituted a cause of action at common law.

The court recognizes the legality of combinations for the purpose of increasing

business and getting gain by legitimate means, and concedes also that one person or a number of persons may by agreement refuse to sell goods to another, and states that from these propositions it is argued that no actionable wrong is shown in the present case, and admits that this line of reasoning has prevailed with some courts. It proceeds, however, to declare its position in the following terse and vigorous English:

"Do these facts constitute a cause of action at common law? We think they do. It is undoubtedly true that, in the absence of any statute to the contrary, several persons may combine for the purpose of increasing their business and making great gains by any legitimate means, and if, as the incidental result of that combination, others are driven out of business, there is no actionable wrong. It is also true that one person or a number of persons, by agreement may refuse to sell goods to another, if the purpose of such refusal be simply to promote his or their own welfare. From these propositions it is argued that no actionable wrong is shown in the present case; that the main purpose of the agreement charged was the lawful purpose to increase their own gains by legitimate means, and hence that the plaintiff is remediless, notwithstanding it is also charged that one purpose of the agreement was to drive the plaintiff out of business. It may at once be admitted that this line of reasoning has been adopted by some of the courts which have been called upon to deal with the subject. It has not, however, been adopted by this court; in fact in the very recent case of *State* v. *Huegin*, 110 Wis. ——, 85 N. W. 1046, it was, in effect, repudiated. It is true that case was a criminal case, but it necessarily involved the question of civil conspiracies at common law, as well as criminal conspiracies, and to the very full discussion there given by Mr. Justice Marshall it seems that very little can profitably be added. It was there stated, in substance and effect, that persons have a right to combine together for the purpose of promoting their individual welfare in any legitimate way, but where the purpose of the organization is to inflict injury on another, and injury results, a wrong is committed upon such other; and this is so notwithstanding such purpose, if formed and executed by an individual, would not be actionable. One person may, through malicious motives, attract to himself another's customers, and thus ruin the business of such other without redress; but when a number of persons, acting wholly or in part from such malicious motives, combine together, the injury to such other is actionable. 'Where the act is lawful for an individual, it can be the subject of conspiracy, when done in concert, only where there is a direct intention that injury shall result from it.' These principles are decisive as to the first count in this complaint. The allegation is distinct and clear that one of the purposes and objects of this agreement was to drive the plaintiff out of business. This was an ulterior and unlawful purpose, and constitutes malice in contemplation of law. Therefore, under the allegations of the complaint, it is clear that the combination here formed was formed for the malicious purpose of doing an injury to another, and that such injury has resulted, and hence that a cause of action at law for damages is stated."

The complaint also prayed for a perpetual injunction restraining the continuance of the operations of the conspiracy. *Held*, that the facts of the complaint stated a good cause of action in equity under the Wisconsin statute, though, because of the misjoinder of the counts, in that the action for damages was for the benefit of the plaintiff alone, while the second "cause of action" affected numerous parties plaintiff in like case with the plaintiff, a demurrer to the entire complaint was sustained, the Wisconsin statute providing that causes of action, in order to be united, "must affect all the parties to the complaint."

The error, however, was one to be easily remedied. The retailers were substantially successful, for the court overruled a demurrer to the first count and sent the case back for an inquiry of damages.